

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**HENRY WAGNER,**  
**Petitioner,**

**v.**

**Case No. 06C0187**

**JODINE DEPPISCH, Warden,**  
**Fox Lake Correctional Institution,<sup>1</sup>**  
**Respondent.**

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**ORDER**

On December 12, 2006, I dismissed Henry Wagner's petition for a writ of habeas corpus. His appeal of such dismissal is currently pending before the Seventh Circuit Court of Appeals. Respondent has filed a motion to transfer petitioner pursuant to Fed. R. App. P. 23(a), which states that:

Pending review of a decision in a habeas corpus proceeding commenced before a court, justice or judge of the United States for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing a need therefor, the court, justice or judge rendering the decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

Respondent notes that petitioner has actually already been transferred, as the previous respondent – Pamela Wallace – was unaware of petitioner's pending litigation. Thus, respondent asks for retroactive permission to transfer. Respondent has attached to the motion an affidavit signed by Wallace explaining that she transferred petitioner for educational and programming purposes, and that such transfer was unrelated to petitioner's pending habeas appeal. Respondent has further attached an affidavit signed by the assistant attorney

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<sup>1</sup>Due to petitioner's transfer, petitioner's new custodian is Jodine Deppisch.  
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general assigned to this case, explaining that he was unaware of petitioner's transfer until after it was effectuated and that he is seeking to ensure that such an oversight does not occur again. As such, it is clear that petitioner's transfer is not "arbitrary, capricious, or an abuse of discretion," and I will retroactively grant the motion to transfer. See Ward v. United States Parole Com., 804 F.2d 64, 67 (7th Cir. 1986).

Dated at Milwaukee, Wisconsin, this 6th day of April, 2007.

BY THE COURT:

s/Lynn Adelman

LYNN ADELMAN

District Judge